IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 1040 of 2005

Between:

The Government of Andhra Pradesh Rep by Principal Secretary, Revenue Department, Secretariat Buildings, Hyderabad

..... PETITIONER

AND

Smt. G. Anitha Rajendra Special Grade Deputy Collector,

W/o Sri G.V. Rajendra Prasad R/o Plot No. 78, Saradanagar, Kulsumpura Post, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari and calling for the records relating to the order passed in OA No. 9197 of 2002 dated 25-02-2004 on the file of the Hon'ble A.P. administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary.

Counsel for the Petitioner:GP FOR SERVICES II

Counsel for the Respondent No.: MR.K.R.SRINIVAS

The Court at the stage of admission made the following :

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ORDER: **(Per the Hon'ble Sri Justice G.Bikshapathy)**

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This Writ Petition is filed by the Government assailing the order passed in O.A.No.9197 of 2002 dated 25-02-2004 on the file of the A.P. Administrative Tribunal, Hyderabad.

2. The respondent was the applicant before the Tribunal. She was working as a Deputy Collector. She was suspended from service by order dated 5-2-1997. The said order was challenged successfully before the Tribunal. Thereafter, she was reinstated into service by order dated 15-10-1999. Again a charge memo dated 16-2-2000 was issued to the applicant, for which she submitted her explanation, but no order was passed by the Government. Therefore, she filed O.A.No. 3821 of 2001 seeking a direction to complete the enquiry. Accordingly, the said O.A. was disposed of. Since the direction was not complied with, she filed C.A.No.947 of 2001 for implementation of the order. Thereupon, the respondents filed Memo dated 2.3.2002 to the effect that the action against the applicant has been dropped. Accordingly, the C.A.No. 947 of 2001 was closed. The services of the respondent were regularized and the period of suspension was treated as on duty. She was given promotion to the post of Special Grade Deputy Collector by the Government in G.O.Ms.No. 536, dated 3.9.2002 with effect from 21.6.1997 on notional basis with physical monetary benefits from the date of joining the post. However, the applicant made a representation to fix her pay with retrospective effect and for payment of arrears from the date of retrospective promotion. As there was no response, the applicant filed O.A. seeking direction to the respondents to pay the arrears of salary

in pursuance of the retrospective promotion. The Tribunal set aside the order of the Government and directed to pay the salary to the applicant for the period from 21-6-1997 till the date of actual joining of duty in the promoted post by order dated 25-2-2004. Assailing the said order, the present Writ Petition has been filed by the Government.

3. The learned Government Pleader submits that the respondent did not discharge the duty as a Special Grade Deputy Collector and therefore she is not entitled for the pay scales attached to the said post from 21-6-1997. Further, she could not be promoted earlier on the ground that she was under suspension and some charges were framed against her. Under those circumstances, the Government cannot be allowed to pay salaries to both the employees. Hence, the learned Government pleader seeks to set aside the order of the Tribunal.

4. Heard the learned counsel for the respondent.

5. The Tribunal having considered the matter and also taking into consideration the decision of the Supreme Court in ***Janakiraman's case***, observed that the respondent is entitled for retrospective promotion together with the financial benefits. The Tribunal further observed that when she was eligible for promotion and when her juniors were promoted, she is also entitled for promotion with the consequential financial benefits. Para 7of the order is relevant which is extracted below:

> *"7. The Full Bench of the Tribunal, while considering the earlier Memorandum dated 30th January, 1982 has, among other things, held that the portion of paragraph 2 of the memorandum which says "but no arrears are allowed in respect of the period prior to the date of the actual promotion" is violative of Articles 14 and 16 of the Constitution because withholding of salary of the promotional post for the period during which the promotion has been withheld while giving other benefits is discriminatory when compared with other employees who are not at the verge of promotion when the disciplinary proceedings were initiated against them.*
>
> *The Tribunal has, therefore, directed that on exoneration, full salary should be paid to such employee which he would have received on promotion if he had not been subjected to disciplinary proceedings.*
>
> *We are afraid that the Tribunal's reference to paragraph 2 of the Memorandum is incorrect. Paragraph 2 only recites the state of affairs as existed on January 30, 1982 and the portion of the Memorandum which deals with the relevant point is the last sentence of the first sub-paragraph after, clause (iii) of*

paragraph 3 of the Memorandum which is reproduced above, That sentence reads as follows:

"But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion".

This sentence is preceded by the observation that when the employee is completely exonerated on the conclusion of the disciplinary court proceedings, that is, when no statutory penalty, including that of censure, is imposed he is to be given a notional promotion from the date he would have been promoted as determined by the Departmental Promotion Committee. This direction in the Memorandum has also to be read along with the other direction which follows in the next sub-paragraph and which states that if it is found as a result of the proceedings that some blame attaches to the officer then the penalty of censure at least should be imposed. This direction is in suppression of the earlier instructions which provided that in a case there departmental disciplinary proceedings have been held, "warning" should not be issued as a result of such proceedings.

There is no doubt that when an employee is completely exonerated and is not visited the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F. R. 17(1) of the Fundamental Rules and Supplementary Rules which read as follows:

"F.R. 17 (1). Subjects to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under

suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the, administration and jeopardize public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the

disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

To this extent we set aside the conclusion of the Tribunal on the said point".

6. Under those circumstances, we find that the order of the Tribunal does not suffer from any illegality or irregularity.

7. Accordingly, the Writ Petition is dismissed. No order as to costs.

G.Bikshapathy,J.

P.S.Narayana,J.

31st January, 2005.

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Registrar, A.P.A.T. Hyderabad.

2. The Principal Secretary, Government of Andhra Pradesh, Revenue Department, Secretariat Buildings, Hyderabad

3. The Special Grade Deputy Collector, Plot No. 78, Saradanagar, Kulsumpura Post, Hyderabad.

4. 2CCs to G.P. for Services-II, High Court Buildings, Hyderabad (OUT)

5. 2 CD copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE P.S.NARAYANA

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31st January, 2005